

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION**

State of Ohio,

Plaintiff-Respondent,

Expungement Case No. 15EP-690
Criminal Case No. 09CR-7035

-vs-

Judge Holbrook

Quentin T. James,

Defendant-Applicant.

STATE’S OBJECTION TO SEALING APPLICANT’S RECORD OF CONVICTION

Pursuant to R.C. 2953.32, applicant has filed an application to seal the record of conviction for general penalty under Title Thirty Five, a first degree misdemeanor in 09CR-7035. (Entry attached) Although applicant is eligible under R.C. 2953.32, the State objects to applicant’s application because the government has a legitimate interest in maintaining access to applicant’s criminal history. Here, the defendant cast an absentee ballot in the 2008 general election when he did not meet the residency requirement for an eligible voter in Franklin County, Ohio. (See attached bill of information) Accordingly, the State respectfully requests that applicant’s application be denied.

“Expungement is an act of grace created by the state, and so is a privilege, not a right.” *State v. Simon*, 87 Ohio St.3d 531, 533 (2000). Even when an applicant is eligible¹ to expunge a conviction, R.C. 2953.32(B) requires a hearing to determine whether applicant has been rehabilitated to the satisfaction of the court and whether the applicant’s interest in sealing the record is outweighed by the State’s interest in maintaining the record. See *id.* The hearing is not

¹ Eligibility for expungement is determined by the following factors: (1) applicant received a final discharge on the conviction, which includes full payment of any restitution ordered; (2) the application was filed after the statutory waiting period; (3) there are no pending criminal proceedings against applicant; (4) applicant qualifies as an eligible offender under RC. 2953.31(A); and (5) the conviction to be sealed does not fall within any category in R.C. 2953.36.

adversarial. Rather, the hearing “provides the court with the opportunity to review matters of record and to make largely subjective determinations regarding whether the applicant is rehabilitated and whether the government’s interest in maintaining the record outweighs the applicant’s interest in having the record sealed.” *State v. Hamilton*, 75 Ohio St.3d 636, 640 (1996). During the hearing, the court should review the record and gather relevant information from the applicant, the prosecutor, as well as through independent court investigation through probation officials. *Id.*

A trial court does not abuse its discretion by finding the government’s interest outweighs an applicant’s interest in sealing the record of a conviction. *State v. Morgan*, 9th Dist. No. 2740 (Jan. 27, 1993); *State v. Krutowsky*, 8th Dist. No. 81545, 2003-Ohio-1731; *State v. Hamilton*, 2nd Dist. No. 14525, 1994 Ohio App. Lexis 6069 (Dec. 14, 1994). In *Morgan*, the court held that the trial court did not abuse its discretion in refusing to expunge a carrying concealed weapon conviction, even though the indicted felony had been pled to a misdemeanor. In *Krutowsky*, the court denied an application to seal a third degree misdemeanor conviction for criminal mischief because the applicant was engaged in business and the public had a legitimate interest in the record. *Krutowsky*, 2003-Ohio-1731 at ¶19. Finally, in *Hamilton*, supra, the court refused to seal a theft conviction where the applicant’s future clients had a legitimate interest in his record. *State v. Hamilton*, 1994 Ohio App. Lexis 6069. The appellate court affirmed, finding that the government’s need to preserve the record was based on protecting “the public’s interest and preserving the public’s opportunity to be informed about such matters with respect to person who may become employed in a fiduciary capacity.” *Id.* at *11.

This is not the “exceptional” case warranting expungement. Given the nature and seriousness of the defendant’s conduct, the government’s interest in maintaining the record

outweighs applicant's interest in sealing the record. In addition, if applicant's record is sealed, there are no statutory provisions which would allow employers or licensing boards to inquire into applicant's cases. By maintaining access to the record in this case, future employers would at least be able to question applicant about the facts underlying the conviction.

The State respectfully requests that applicant's application be denied.

Respectfully submitted,

RON O'BRIEN
Prosecuting Attorney

/s/ Barbara A. Farnbacher
Barbara A. Farnbacher 0036862
Assistant Prosecuting Attorney
373 South High Street, 13th Floor
Columbus, Ohio 43215
614/525-3555

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing notice was served upon Quentin T. James, applicant pro se, at 8520 Oaktree Dr., Macedonia, Ohio, 44056, by regular U.S. Mail, postage prepaid on the 22nd day of October 2015.

/s/ Barbara A. Farnbacher
Barbara A. Farnbacher 0036862
Assistant Prosecuting Attorney

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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CRIMINAL DIVISION	INITIALS NO.
	BY: <i>[Signature]</i>

STATE OF OHIO, :
 PLAINTIFF, : JANUARY TERM, 2009
 v. : CASE NO. 09CR-7035
 QUENTIN JAMES, : JUDGE HOLBROOK
 DEFENDANT. :

FILED
 COMMON PLEAS COURT
 FRANKLIN CO., OHIO
 2009 NOV 24 PM 2:57
 CLERK OF COURT

ENTRY

In the Court of Common Pleas for the County of Franklin, State of Ohio, during the term begun on January 2, 2009.

On November 24, 2009, came the Assistant Prosecuting Attorney on behalf of the State of Ohio, the Defendant being in Court in custody of the Sheriff and the Court being fully advised in the premises that the Defendant was in Court and being represented by counsel, Adele Shank.

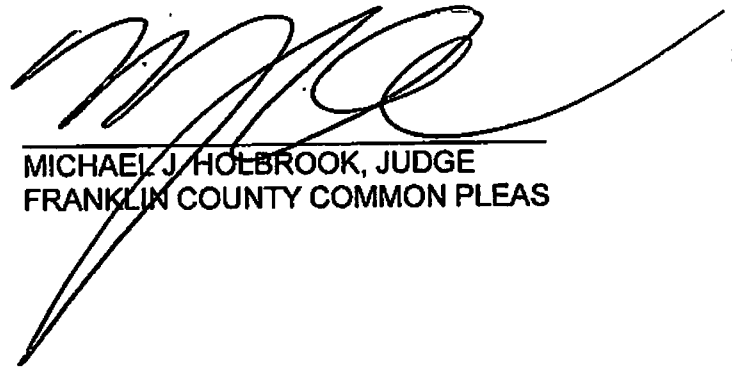
The Defendant on November 24, 2009, plead guilty to Count One of the Bill of Information, to wit: **GENERAL PENALTY**, in violation of **Section 3599.40** of the Ohio Revised Code, being a Misdemeanor of the **First Degree**, and was found guilty of said charge by the Court.

The Court afforded Counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally, affording him an opportunity to make a statement in his own behalf and present information in mitigation of punishment.

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The Court has considered all matters required by sections 2929.12 and 2951.02 of the Ohio Revised Code, and it is the sentence of the Court that the Defendant pay a fine in the amount of \$1,000.00, pay court costs in an amount to be determined, and serve **ONE HUNDRED EIGHTY (180) DAYS** at the **FRANKLIN COUNTY CORRECTIONS CENTER**. **Enforcement on the one hundred eighty (180) days is April 1, 2010 at 8:30 a.m.; if costs are paid by March 31, 2010 by 5:00 p.m., incarceration will be SUSPENDED.**

The Court has factually found that the Defendant is to receive **zero (0) days** of jail time credit certified to the **FRANKLIN COUNTY CORRECTIONS CENTER** toward his sentence. Defendant is to receive jail time credit for all time served prior to transportation to the institution.



MICHAEL J. HOLBROOK, JUDGE
FRANKLIN COUNTY COMMON PLEAS

Termination No. 12
Terminated by: LL

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State of Ohio,

Case No.

09CR 11 7035

Franklin County, ss:

FILED
COMMON PLEAS COURT
2009 NOV 24 AM 9:26
CLERK OF COURTS

**INFORMATION FOR: General Penalty
Under Title Thirty Five (35) (3599.40
R.C.) (M-1) (1 Count); (Total: 1 Count)**

In the Court of Common Pleas, Franklin County, Ohio, of the Grand Jury term beginning September eleventh in the year of our Lord, Two Thousand Nine.

Ron O'Brien, the duly elected and qualified Prosecuting Attorney of Franklin County, Ohio, in the name of and by the authority of the State of Ohio, says that prior to this information, Quentin Tyris James was duly advised by the Court of the nature of the charge against him and of his rights under the Constitution, and he stated that he understood the nature of said charge against him and his constitutional, statutory, and procedural rights, and that he had fully discussed all aspects of his case with his attorney, Adele Shank, and he was completely satisfied with the legal representation and advice and waived in writing and in open Court prosecution of the offense by indictment,

Count 1

By way of information, Quentin Tyris James late of said County, from on ~~or about October 6, 2008, within the County of Franklin aforesaid, in violation~~ of section 3599.40 of the Ohio Revised Code, did violate a provision under title 35 of the Ohio Revised Code, to wit: Quentin Tyris James did cast an absentee ballot in the 2008 Ohio General Election when he did not meet the residency requirement for an eligible voter in the county of Franklin, State of Ohio,

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contrary to the statute in such cases made and provided and against the peace
and dignity of the State of Ohio.

RON O'BRIEN
Prosecuting Attorney
Franklin County, Ohio



Brian E. Simms 0063313
Assistant Prosecuting Attorney